

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL DISTRICT
INGHAM COUNTY

KEN ROSS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE REGULATION
FOR THE STATE OF MICHIGAN,

Petitioner,

File No. 03-1127-CR

vs

Hon. William E. Collette

THE WELLNESS PLAN,
a Michigan Health Maintenance Organization,

Respondent.

_____/

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_____/

FINAL ORDER GRANTING
REHABILITATOR'S VERIFIED PETITION TO TRANSFER
POSSESSION OF ASSETS AND CONTROL OF THE BUSINESS.
APPROVE THE ACTIONS OF THE REHABILITATOR.
DISCHARGE THE REHABILITATOR.
TERMINATE RECEIVERSHIP.
CLOSE THE CASE AND FOR RELATED RELIEF

At a session of said Court held in the City of Mason,
County of Ingham, State of Michigan on: July 28, 2009

PRESENT: HON. _____
CIRCUIT COURT JUDGE

Factual Findings and Recitals

The Court placed The Wellness Plan (sometimes referred to herein as “TWP”) in formal rehabilitation (“Receivership”) proceedings under Chapter 81 of the Michigan Insurance Code of 1956, MCL 500.8101 *et seq.*, by its order entered July 1, 2003;

The Court appointed, pursuant to statute, the then-Commissioner of the Office of Financial and Insurance Services (k/n/a the Commissioner of the Office of Financial and Insurance Regulation) as Rehabilitator of The Wellness Plan and directed the Rehabilitator to take immediate possession of the assets of The Wellness Plan and to administer those assets under the Court’s general supervision;

The Rehabilitation Order by operation of law vested legal title to all assets and moneys of The Wellness Plan in the Rehabilitator;

The Rehabilitator, or his predecessor, have, since the inception of the Receivership on July 1, 2003, taken possession of The Wellness Plan’s assets, marshaled assets, compromised claims, mitigated liabilities, sought and received recoveries from various individuals and entities, and administered the business of The Wellness Plan as provided in the Insurance Code of 1956, as amended;

The Court has supervised the Receivership of The Wellness Plan since July 1, 2003;

During the Receivership, the Court has had exclusive jurisdiction over creditor claims against The Wellness Plan.

The Rehabilitator, with the Court’s supervision and approval, has adjudicated creditor claims and has amicably resolved all such claims except as are specifically provided for in this Order;

The Court has entered many orders throughout the course of the Receivership directing the actions of the Rehabilitator;

The Receiver has implemented the orders of the Court and has made full distribution to parties entitled to distributions thereunder;

The Court has supervised the implementation and application of its orders;

The Court annually has reviewed the Interim Reports and Accountings for the Receivership for the period of July 1, 2003, through May 30, 2009, which are on public file with the Ingham County Circuit Court, and which by this reference are incorporated and adopted here by reference;

The Rehabilitator has filed a Verified Petition to Transfer Possession of Assets and Control of the Business, Approve the Actions of the Rehabilitator, Discharge the Rehabilitator, Terminate Receivership, Close the Case and For Related Relief ("Petition to Terminate") and has served it on all persons/entities and/or their counsel who are known to have outstanding or ongoing claims, suits or controversies that affect or that are or may be affected by the Receivership proceeding. Further, the Rehabilitator posted a copy of the Petition to Terminate on the State of Michigan website along with the other Wellness Plan documents previously posted there.

The Court has reviewed the Petition to Terminate and has heard argument on it;

No timely response or objection to the Petition to Terminate was filed with the Court;

The Court has knowledge of the matters brought before the Court for review and approval;
and

Having reviewed the Petition to Terminate, the Court finds its averment of facts to be accurate and true.

Order

This Final Order is based upon the foregoing findings and the extensive and public record of these proceedings from July 1, 2003 to July 28, 2009.

The Court FINDS that service of the Petition to Terminate and Notice of Hearing as specified in the Petition to Terminate, in the Proof of Service filed simultaneously with the Petition to Terminate and the supplemental Proof of Service filed with the Court is adequate, full, fair and sufficient notice of the bases for and relief sought herein by the Rehabilitator, that such notice is in compliance with applicable law, and that no other notice is required in connection with this Final Order;

The Court further FINDS that The Wellness Plan's medical clinics are currently operating at a net profit;

The Court further FINDS that the rehabilitation of The Wellness Plan has been accomplished and the grounds for rehabilitation under Section 8112 of the Insurance Code, MCL 500.8112, no longer exist.

IT IS ORDERED that because no response of any type or kind to the Receiver's Petition to Terminate was filed with this Court by July 27, 2009, ALL OBJECTIONS TO THE RECEIVER'S PETITION TO TERMINATE ARE COMPLETELY AND FOREVER BARRED.

IT IS FURTHER ORDERED that the Receiver's Petition to Terminate is GRANTED for the reasons stated herein and on the record.

IT IS FURTHER ORDERED that the property of The Wellness Plan, including but not limited to legal title to all assets and money of The Wellness Plan, and control of its business is

hereby transferred to the FQHC Board of Directors ("FQHC Board") appointed and serving under the Bylaws of The Wellness Plan.

IT IS FURTHER ORDERED that funds in the amount that was presented under seal to the Court and presented to the FQHC Board shall be reserved from the general assets of The Wellness Plan (the "Reserved Funds") and placed in a separate account for potential payment of (1) judgments or settlements and (2) attorney and other litigation fees, costs and expenses, up to and including fees, costs and expenses of appeal, if necessary, associated with the defense of the matters entitled *Thomas v The Wellness Plan*, *Byrd v The Wellness Plan* and *Green v The Wellness Plan* (the "Thomas, Byrd and Green matters"), currently pending in this Court under the Rehabilitation case number.

IT IS FURTHER ORDERED that the FQHC Board may access the Reserved Funds from time to time for payment of settlements, judgments and/or litigation fees, costs and expenses incurred with respect to the Thomas, Byrd and Green matters, provided that the Board first obtains an order of this Court permitting such access to the Reserved Funds.

IT IS FURTHER ORDERED that the FQHC Board must obtain an order of this Court for approval of any final resolution of the Thomas, Byrd and Green matters that involves any payment from the Reserved Funds, as well for the final disposition of the Reserved Funds, including the release of any unexpended portion of the Reserved Funds following final disposition of the Thomas, Byrd and Green matters.

IT IS FURTHER ORDERED that upon entry of this Final Order the FQHC Board shall assume and be required to pay all expenses incurred or to be incurred with respect to the Receivership, including but not limited to the following:

- a. Invoices for services provided to the Rehabilitator and/or TWP by OFIR on or prior to the date of entry of this Final Order.
- b. Any unpaid and owing severance, medical pension, pension plan and other similar obligations with respect to current and former employees of TWP and all future medical pension, pension plan and other similar obligations of TWP that will accrue with respect to former employees;
- c. Invoices for legal services provided to the Rehabilitator and/or TWP by the firms of Zausmer, Kaufman, August, Caldwell & Tayler, P.C., and Grier, Copeland & Williams, P.C., on or prior to the date of entry of this Final Order.
- d. Other expenses, including attorney fees and costs, that may be incurred by the Rehabilitator in the ordinary course of accomplishing the final transfer of the assets and control of the business and preparing and filing the final accounting;
- e. Costs of storage for 5 years of the Deputy Rehabilitator's records that have been maintained at The Wellness Plan's offices;
- f. Costs of the defense and liability or potential liability with respect to causes of action that accrued or may have accrued during the Receivership, including but not limited to the Thomas, Byrd and Green matters, subject, however, to the terms of this Final Order regarding the Reserved Funds.
- g. Payment of medical malpractice settlements approved by the Court but unpaid as of the date of this Final Order. The relevant settlements, as of the date of entry of this Final Order, are in the following matters: (1) *Byron Jorell Clark, a minor*, by

his Next Friend, Trena Clark; (2) Camille Snell, a minor, and Twila Snell, her mother and (3); Duane Russell, a minor, by his mother, Courtney Rhodman.

- h. Tax-filing responsibilities and tax liabilities, if any, for the Receivership period, including but not limited to any property taxes determined to be due to the City of Oak Park upon resolution of Michigan Tax Tribunal Docket No. 0345600, including any appeal therefrom.

IT IS FURTHER ORDERED that the Rehabilitator or his designee shall retain authority and shall cooperate with the FQHC Board to take any action, including execution of documents, necessary to fully accomplish the transfer of the assets and control of the business of The Wellness Plan to the FQHC Board, including but not limited to signing bank signature cards, substitutions of counsel, transfer of authority over accounts, assignments of receivables, and any documents required to ensure that the FQHC Board receives the full benefit of the assets of and control of the business of The Wellness Plan.

IT IS FURTHER ORDERED that the FQHC Board, within 21 days after entry of this Final Order, shall notify the Rehabilitator's counsel regarding transfer of any legal files held by counsel, subject to the terms of any retention agreement.

IT IS FURTHER ORDERED that the pursuit of any existing receivable of The Wellness Plan, including but not limited to the suit pending in this Court captioned *Ross v. Garden City Hospital Professional Staff, P.C.*, pending under Ingham County Circuit Court Case No. 09-785-CK, and any pending pharmaceutical class action suits, shall from and after the entry of this Final Order be the responsibility of and at the discretion of the FQHC Board.

IT IS FURTHER ORDERED that after release of the assets to the FQHC Board, the Rehabilitator shall file a simple accounting (the "Post-Closure Accounting"), accounting for the receipt and disbursement of all funds after the coverage period of the Rehabilitator's Final Report.

IT IS FURTHER ORDERED that the FQHC Board shall cooperate with the Rehabilitator or his designee(s) to accomplish the Post-Closure accounting.

IT IS FURTHER FOUND AND ORDERED that pursuant to the Petition to Terminate and the Court's review of the extensive matters of record, the actions taken or not taken by the Rehabilitator, the Deputy Rehabilitator, their predecessors, the Receivership staff, agents, accountants, counsel for the Rehabilitator and/or counsel for The Wellness Plan (including, without limitation, any ministerial actions to be taken post-Closure) meet, have met or will meet the requirements of Chapter 81 of the Insurance Code, the prior Orders of this Court and, in general, the law of the state of Michigan as ascertained by and reviewed by this Court after July 1, 2003, through the date of the entry of this Final Order and if in accordance with the terms of this Final Order then also for any such other actions taken in connection with carrying out the mandates of or pursuant to this Final Order.

IT IS FURTHER ORDERED that the Rehabilitator, his deputy rehabilitators and their respective predecessors, successors, officers, directors, agents, attorneys, accountants, assigns and special deputies are fully, finally and unconditionally DISCHARGED AND RELEASED from any duties, obligations and liabilities with respect to any and all actions taken or not taken, events and/or occurrences after July 1, 2003, with respect to the receivership of The Wellness Plan, including without limitation, if in accordance with the terms of this Final Order, any other actions taken in connection with carrying out the mandates of or pursuant to this Final Order.

IT IS FURTHER ORDERED that all claims and actions against the Rehabilitator, his deputy rehabilitator and/or their respective predecessors, successors, officers, directors, agents, attorneys, accountants and assigns, for all actions taken or not taken, events and/or occurrences after July 1, 2003, through the date of entry of this Final Order, and, if in accordance with the terms of this Final Order, then also for any such other actions taken in connection with carrying out the mandates of or pursuant to this Final Order, are and shall be COMPLETELY AND FOREVER BARRED, whether such claims are reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, or known or unknown.

IT IS FURTHER ORDERED that from and after entry of this Final Order the Receiver shall have no further responsibility or obligation under Chapter 81 of the Insurance Code or the laws of the state of Michigan with respect to any matter relating to the Receivership of The Wellness Plan, except as specifically set forth in this Final Order.

IT IS FURTHER ORDERED that, because this Final Order terminates the receivership estate of The Wellness Plan, the Receiver is relieved of any and all obligations to file annual reports, quarterly reports, interim accountings or other periodic reports or accountings with this Court, the Office of Financial and Insurance Regulation or any other entity, but that the Rehabilitator shall file the Post-Closure Accounting and may file any permitted petitions as specifically set forth in this Order.

IT IS FURTHER ORDERED that the receivership/rehabilitation of The Wellness Plan is TERMINATED.

IT IS FURTHER ORDERED that this FINAL ORDER disposes of all pending matters, and that this case is CLOSED.

IT IS FURTHER ORDERED that although this case is now closed, the Clerk is directed to accept and file any reports or petitions required or permitted by this Order.

IT IS FURTHER ORDERED that this Court to retains jurisdiction to enforce the terms of this Final Order.

IT IS FURTHER ORDERED that the Rehabilitator may, pursuant to MCLA 500.8147, petition this Court, at any time, to reopen the proceedings for the purpose of enforcing any right of the Rehabilitator or any agreement into which the Rehabilitator has entered, including, but not limited to, settlement agreements and contracts of any kind. Upon such petition by the Rehabilitator or his duly-appointed statutory successor only, this matter will be reopened solely for the purpose of enforcing any right of the Rehabilitator or agreement as to which the Rehabilitator is a party or for the purpose of undertaking any action deemed necessary or prudent by the Rehabilitator.

WILLIAM E. COLLETTE

CIRCUIT COURT JUDGE